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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 Deborah J. Thomas,

14 Plaintiff,

15 vs.

16 The Walt Disney Company, Walt Disney
Studios, Disney Press, Pixar Animation
17 Studios, Walt Disney Feature Animation, Walt
Disney Pictures, Disney Enterprises, Inc., and
18 DOES 1 through 100, Inclusive,

19 Defendants.

CASE NO. 3:07-CV-4392

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE**

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22 Pursuant to Federal Rule of Evidence 201, defendants The Walt Disney Company, Walt
23 Disney Pictures (also sued as Walt Disney Studios and Walt Disney Feature Animation), Disney
24 Book Group, LLC (sued as Disney Press), Pixar (sued as Pixar Animation Studios), and Disney
25 Enterprises, Inc. ("Defendants") respectfully request that this Court take judicial notice of the
26 following facts:
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28

- 1 • Defendants' motion picture "Finding Nemo" was shown before May 30, 2003, as
- 2 reported in Exhibits D-G to the Declaration of Andrea Pallios Roberts;
- 3 • "Finding Nemo" and its general plot, story line and characters, was publicized
- 4 before its May 30, 2003 general release, as reported in Exhibits A-L of the Roberts
- 5 Declaration;
- 6 • "Finding Nemo" was advertised in trailers preceding other movies and in television
- 7 commercials in advance of its general release on May 30, 2003, as is generally done
- 8 for major motion pictures;
- 9 • Before the movie "Finding Nemo" was generally released, it was publicized that
- 10 Defendants would develop video games based on the film, as reported in Exhibits J
- 11 and K to the Roberts Declaration;
- 12 • Before the May 30, 2003 release of the film "Finding Nemo," Defendants
- 13 publicized that they planned an extensive marketing campaign in connection with
- 14 the film, as reported in Exhibit K to the Roberts Declaration.
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- 16

17 The above facts are generally known and capable of accurate and ready determination by resort to
 18 sources whose accuracy cannot be reasonably questioned. Fed. R. Evid. 201(b)

19 1. Published Newspaper and Magazine Articles

20 Defendants request the Court take judicial notice of the publicity for Defendants' motion
 21 picture, "Finding Nemo," that took place prior to the motion picture's May 30, 2003 general
 22 theatrical release, as shown in the newspaper and magazine articles attached to the Roberts
 23 Declaration as Exhibits A, B, C, D, E, F, G, H, and I. It is appropriate for the Court to take
 24 judicial notice of this material because it is both "generally known within the territorial
 25 jurisdiction of the trial court" and "capable of accurate and ready determination by resort to
 26 sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Courts may take
 27 judicial notice of adjudicative facts such as those appearing in newspapers. *Crowder v. Kitagawa*,
 28

81 F.3d 1480, 1491 n.10 (9th Cir. 1996) (stating the court may take judicial notice of adjudicative facts appearing in newspapers); *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458 (9th Cir. 1995) (taking judicial notice of existence of corporate layoffs based upon newspaper articles); *Gomez-Vigil v. INS*, 990 F.2d 1111, 1115 (9th Cir. 1993) (“I will take judicial notice of the existence of accounts in leading newspapers stating that former Sandinistas control the Nicaraguan army and police forces”); *Cochran v. NYP Holdings, Inc.*, 58 F. Supp. 2d 1113, 1123 (C.D. Cal. 1998) (taking judicial notice of “overwhelming deluge of publicity attendant to” the O.J. Simpson trial)

2. Press Releases Published on Pixar's Website

Defendants request that the Court take judicial notice of three press releases available on Defendant Pixar's website, attached to the Roberts Declaration as Exhibits J, K and L. Judicial notice is appropriate because the press releases' availability on Pixar's website is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned” -- the internet. Fed. R. Evid. 201(b). The Court may take judicial notice of the existence and contents of websites. *See Lund v. Luprino*, 2007 WL 1775474, *1 n.3 (E.D. Cal. 2007) (“[T]he court will grant judicial notice of the two documents on the state Emergency Services' website”); *Caldwell v. Caldwell*, 420 F. Supp. 2d 1102, 1105 n.3 (N.D. Cal. 2006) (granting request to take judicial notice of two sets of web pages); *Pollstar v. Gigmania*, 170 F.Supp.2d 974, 978 n.2 (E.D. Cal. 2000) (“[T]he Court may take judicial notice of the printout of the web site for the limited purpose of evaluating the online license agreement.”); *Hendrickson v. eBay, Inc.*, 165 F.Supp.2d 1082, 1084 n.2 (C.D. Cal. 2001) (“To the extent some of the descriptions about eBay's website are not in the record, the Court takes judicial notice of www.eBay.com and the information contained therein....”); *Cairns v. Franklin Mint Co.*, 107 F.Supp.2d 1212, 1216 (C.D. Cal. 2000) (taking judicial notice of Andy Warhol's Internet site even though it was not submitted by any party).

For the foregoing reasons, this Court should take judicial notice of the documents attached as Exhibits A-I of the Roberts Declaration.

1 DATED: August 31, 2007

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

3 By /s/ Claude M. Stern

4 Claude M. Stern

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Company, Walt Disney Pictures, Disney Book
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